Volume 31, Number 6 Pages 437–536 March 15, 2006

### SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."



## ROBIN CARNAHAN SECRETARY OF STATE

# MISSOURI REGISTER

The *Missouri Register* is an official publication of the state of Missouri, under the authority granted to the secretary of state by sections 536.015, RSMo Supp. 2005 and 536.033, RSMo 2000. Reproduction of rules is allowed; however, no reproduction shall bear the name *Missouri Register* or "official" without the express permission of the secretary of state.

The Missouri Register is published semi-monthly by

### SECRETARY OF STATE

#### ROBIN CARNAHAN

Administrative Rules Division
James C. Kirkpatrick State Information Center
600 W. Main
Jefferson City, MO 65101
(573) 751-4015

**DIRECTOR** 

Barbara Wood

**EDITORS** 

Barbara McDougal

JAMES MCCLURE

ASSOCIATE EDITORS

CURTIS W. TREAT

SALLY L. REID

PUBLISHING STAFF

Wilbur Highbarger

JACQUELINE D. WHITE

ISSN 0149-2942, USPS 320-630; periodical postage paid at Jefferson City, MO Subscription fee: \$56.00 per year

POSTMASTER: Send change of address notices and undelivered copies to:

MISSOURI REGISTER
Office of the Secretary of State
Administrative Rules Division
PO Box 1767
Jefferson City, MO 65102

The Missouri Register and Code of State Regulations (CSR) are now available on the Internet. The Register address is <a href="http://www.sos.mo.gov/adrules/moreg/moreg.asp">http://www.sos.mo.gov/adrules/moreg/moreg.asp</a> and the CSR is <a href="http://www.sos.mo.gov/adrules/csr/csr.asp">http://www.sos.mo.gov/adrules/csr/csr.asp</a>. These websites contain rulemakings and regulations as they appear in the Registers and CSR. These websites do not contain the official copies of the Registers and CSR. The official copies remain the paper copies published by the Office of the Secretary of State pursuant to sections 536.015 and 536.031, RSMo Supp. 2005. While every attempt has been made to ensure accuracy and reliability, the Registers and CSR are presented, to the greatest extent practicable as they appear in the official publications. The Administrative Rules Division may be contacted by e-mail at rules@sos.mo.gov.

The secretary of state's office makes every effort to provide program accessibility to all citizens without regard to disability. If you desire this publication in alternate form because of a disability, please contact the Division of Administrative Rules, PO Box 1767, Jefferson City, MO 65102, (573) 751-4015. Hearing impaired citizens should contact the director through Missouri relay, (800) 735-2966.

# Missouri



# REGISTER

March 15, 2006 Vol. 31 No. 6 Pages 437–536

### IN THIS ISSUE:

EMERGENCY RULES Elected Officials Secretary of State	Department of Natural Resources Geological Survey and Resource Assessment Division
EXECUTIVE ORDERS	Children's Division
PROPOSED RULES  Department of Agriculture    Animal Health	State Board of Probation and Parole
ORDERS OF RULEMAKING Office of Administration Division of Facilities Management, Design and Construction	CONTRACTOR DEBARMENT LIST509DISSOLUTIONS.510SOURCE GUIDESSOURCE GUIDESRULE CHANGES SINCE UPDATE.517EMERGENCY RULES IN EFFECT.523EXECUTIVE ORDERS.525REGISTER INDEX.528

Register	Register	Code	Code
Filing Deadlines	Publication Date	Publication Date	Effective Date
January 3, 2006	February 1, 2006	February 28, 2006	March 30, 2006
January 17, 2006	February 15, 2006	February 28, 2006	March 30, 2006
February 1, 2006	March 1, 2006	March 31, 2006	April 30, 2006
February 15, 2006	March 15, 2006	March 31, 2006	April 30, 2006
March 1, 2006	April 3, 2006	April 30, 2006	May 30, 2006
March 15, 2006	April 17, 2006	April 30, 2006	May 30, 2006
April 3, 2006	May 1, 2006	May 31, 2006	June 30, 2006
April 17, 2006	May 15, 2006	May 31, 2006	June 30, 2006
May 1, 2006	June 1, 2006	June 30, 2006	July 30, 2006
May 15, 2006	June 15, 2006	June 30, 2006	July 30, 2006
June 1, 2006	July 3, 2006	July 31, 2006	August 30, 2006
June 15, 2006	July 17, 2006	July 31, 2006	August 30, 2006
July 3, 2006	August 1, 2006	August 31, 2006	September 30, 2006
July 17, 2006	August 15, 2006	August 31, 2006	September 30, 2006
August 1, 2006	September 1, 2006	September 30, 2006	October 30, 2006
August 15, 2006	September 15, 2006	September 30, 2006	October 30, 2006
September 1, 2006	October 2, 2006	October 31, 2006	November 30, 2006
September 15, 2006	October 16, 2006	October 31, 2006	November 30, 2006
October 2, 2006	November 1, 2006	November 30, 2006	December 30, 2006
October 16, 2006	November 15, 2006	November 30, 2006	December 30, 2006
November 1, 2006	December 1, 2006	December 31, 2006	January 30, 2007
November 15, 2006	December 15, 2006	December 31, 2006	January 30, 2007
December 1, 2006	January 2, 2007	January 29, 2007	February 28, 2007
December 15, 2006	January 17, 2007	January 29, 2007	February 28, 2007

Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at <a href="http://www.sos.mo.gov/adrules/pubsched.asp">http://www.sos.mo.gov/adrules/pubsched.asp</a>

### **Missouri Participating Libraries**

The Missouri Register and the Code of State Regulations, as required by the Missouri Documents Law (section 181.100, RSMo Supp. 2005), are available in the listed participating libraries, as selected by the Missouri State Library:

Jefferson County Library PO Box 1486, 3021 High Ridge High Ridge, MO 63049-1486 (314) 677-8689

Jefferson College Library 1000 Viking Drive Hillsboro, MO 63050-2441 (314) 789-3951 ext. 160

St. Louis Public Library 1301 Olive St. St. Louis, MO 63103-2389 (314) 539-0376

St. Louis University Law Library 3700 Lindell Blvd. St. Louis, MO 63108-3478 (314) 977-2742

Eden Theological Seminary/ Webster University Eden/Webster Library 475 East Lockwood Ave. St. Louis, MO 63119-3192 (314) 961-2660 ext. 7812

Thomas Jefferson Library University of Missouri-St. Louis 8001 Natural Bridge Road St. Louis, MO 63121-4499 (314) 516-5084

Washington University Washington University Law Library Campus Box 1171, Mudd Bldg., One Brookings Dr. St. Louis, MO 63130-4899 (314) 935-6443

St. Louis County Library 1640 S. Lindbergh Blvd. St. Louis, MO 63131-3598 (314) 994-3300 ext. 247

Maryville University Library 13550 Conway Road St. Louis, MO 63141-7232 (314) 529-9494

St. Charles City-County Library Middendorf-Kredell Branch 2750 Hwy K O'Fallon, MO 63366-7859 (636) 978-7997

Truman State University Pickler Memorial Library 100 E. Normal Kirksville, MO 63501-4221 (660) 785-7416 Learning Resources Center Mineral Area College PO Box 1000 Park Hills, MO 63601-1000 (573) 431-4593

Cape Girardeau Public Library 711 N. Clark Cape Girardeau, MO 63701-4400 (573) 334-5279

Kent Library Southeast Missouri State University One University Plaza Cape Girardeau, MO 63701-4799 (573) 651-2757

Riverside Regional Library PO Box 389, 204 South Union St. Jackson, MO 63755-0389 (573) 243-8141

Rutland Library Three Rivers Community College 2080 Three Rivers Blvd. Poplar Bluff, MO 63901-2393 (573) 840-9656

James C. Kirkpatrick Library Central Missouri State University 142 Edwards Library Warrensburg, MO 64093-5020 (660) 543-4149

Kansas City Public Library 14 West 10th Street Kansas City, MO 64105 (816) 701-3546

Law Library University of Missouri-Kansas City 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-2438

University of Missouri-Kansas City Miller Nichols Library 5100 Rockhill Road Kansas City, MO 64110-2499 (816) 235-2438

B.D. Owens Library Northwest Missouri State University 800 University Drive Maryville, MO 64468-6001 (660) 562-1841

St. Joseph Public Library 927 Felix Street St. Joseph, MO 64501-2799 (816) 232-8151 Missouri Western State College Hearnes Learning Resources Ctr. 4525 Downs Drive St. Joseph, MO 64507-2294 (816) 271-5802

Library North Central Missouri College PO Box 111, 1301 Main Street Trenton, MO 64683-0107 (660) 359-3948 ext. 325

Missouri Southern State University Spiva Library 3950 East Newman Road Joplin, MO 64801-1595 (417) 625-9342

Missouri State Library 600 West Main, PO Box 387 Jefferson City, MO 65102-0387 (573) 751-3615

Missouri State Archives 600 West Main, PO Box 778 Jefferson City, MO 65102-0778 (573) 526-6711

Elmer Ellis Library University of Missouri-Columbia 106 B Ellis Library Columbia, MO 65211-5149 (573) 882-0748

Library State Historical Society of Missouri 1020 Lowry St. Columbia, MO 65211-7298 (573) 882-9369

Daniel Boone Regional Library PO Box 1267, 100 West Broadway Columbia, MO 65205-1267 (573) 443-3161 ext. 359

School of Law University of Missouri-Columbia 224 Hulston Hall Columbia, MO 65211-0001 (573) 882-1125

Central Methodist College Smiley Memorial Library 411 Central Methodist Square Fayette, MO 65248-1198 (660) 248-6279 Library University of Missouri-Rolla 1870 Miner Circle Rolla, MO 65409-0060 (573) 341-4007

Lebanon-Laclede County Library 135 Harwood Ave. Lebanon, MO 65536-3017 (417) 532-2148

University Library Southwest Baptist University 1600 University Ave. Bolivar, MO 65613-2597 (417) 328-1631

Barry-Lawrence Regional Library 213 6th St. Monett, MO 65708-2147 (417) 235-6646

Lyons Memorial Library College of the Ozarks General Delivery Point Lookout, MO 65726-9999 (417) 334-6411 ext. 3551

Garnett Library Southwest Missouri State University 304 Cleveland West Plains, MO 65775-3414 (417) 255-7945

Springfield-Greene County Library 4653 S. Campbell Springfield, MO 65801-0760 (417) 874-8110

Meyer Library Southwest Missouri State University PO Box 175, 901 S. National Springfield, MO 65804-0095 (417) 836-4533

#### HOW TO CITE RULES AND RSMo

**RULES**—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the Code of State Regulations in this system—

 Title
 Code of State Regulations
 Division
 Chapter
 Rule

 1
 CSR
 10 1.
 010

 Department
 Agency, Division
 General area regulated
 Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

ules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the Missouri and the United States Constitutions; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons and findings which support its conclusion that there is an immediate danger to the public health, safety or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

ules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

Il emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

### Title 15—ELECTED OFFICIALS Division 30—Secretary of State Chapter 9—Uniform Counting Standards

#### **EMERGENCY RESCISSION**

15 CSR 30-9.020 Uniform Counting Standards—Optical Scan Voting Systems. This rule provided for standards to be used by election authorities when counting ballots cast using optical scan voting systems.

PURPOSE: This rule is being rescinded so that updated standards may be promulgated for use by election authorities when counting ballots using optical scan voting systems.

EMERGENCY STATEMENT: There is a compelling governmental interest in rescinding this rule because a corresponding emergency rule updating the counting standards for optical scan voting systems has been filed and will be effective February 18, 2006. A proposed rescission, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rescission is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Office of the Secretary of State believes this emergency rescission is fair to all interested persons and parties under the circumstances. This emergency rescission was filed February 2, 2006, effective February 18, 2006, expires August 16, 2006.

AUTHORITY: section 115.225, RSMo 2000. Original rule filed Aug. 8, 2001, effective March 1, 2002. Emergency rescission filed Feb. 2, 2006, effective Feb. 18, 2006, expires Aug. 16, 2006. A proposed rescission covering this same material is published in this issue of the Missouri Register.

## Title 15—ELECTED OFFICIALS Division 30—Secretary of State Chapter 9—Uniform Counting Standards

#### **EMERGENCY RULE**

15 CSR 30-9.020 Uniform Counting Standards—Optical Scan Voting Systems

PURPOSE: This rule provides for standards to be used by election authorities when counting ballots cast using optical scan voting systems.

EMERGENCY STATEMENT: The Help America Vote Act (HAVA) of 2002, requires each state to enact laws to improve election administration and to create standards in several key areas. HAVA requires states to promulgate uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the state. As part of the Elections Division program for compliance with HAVA and the equipment qualification process, the Secretary of State (SOS) reviewed existing counting standards. This review revealed a potential for ambiguity in the counting standards rule for optical scan ballots, for example the use of the term "adjacent to." The local jurisdictions are in the process of finalizing their HAVA compliant voting system purchases and it has become apparent that the vast majority of voters in the state of Missouri will be using optical scan voting systems, many of them for the first time. The increased numbers of voters and jurisdictions using optical scan voting systems makes a uniform counting standard that maximizes the accuracy and efficiency of hand recounts crucial to the improvement of election administration. As the first election in 2006 approaches that involves all local election authorities, including those jurisdictions using optical scan systems for the first time (April 4), there is a compelling governmental interest for a uniform counting standard which is capable of expeditiously handling a large volume of ballots.

The scope of this emergency rule is limited to the circumstances creating the emergency and complied with the protections extended in the Missouri and United States Constitutions. The Office of the Secretary of State believes this emergency is fair to all interested persons and parties under the circumstances. This emergency rule was filed February 2, 2006, effective February 18, 2006, expires August 16, 2006.

- (1) The election authority shall be responsible for insuring that the standards provided for in this rule are followed when counting ballots cast using optical scan voting systems.
- (2) Prior to tabulating ballots all machines shall be programmed to reject blank ballots where no votes are recorded, or where an overvote is registered in any race.
- (A) In jurisdictions using precinct-based tabulators, the voter who cast the ballot shall review the ballot if rejected, to determine if he/she wishes to make any changes to the ballot or if he/she would like to spoil their ballot and receive another ballot.
- (B) In jurisdictions using centrally based tabulators, if a ballot is so rejected, it shall be reviewed by a bipartisan team using the following criteria:

- 1. If a ballot is determined to be damaged, the bipartisan team shall spoil the original ballot and duplicate the voter's intent on the new ballot, provided that there is an undisputed method of matching the duplicate card with its original after it has been placed with the remainder of the ballot cards from that precinct; and
  - 2. The provisions of sections (3), (4), (5) and (6) of this rule.
- (3) The following marks shall be considered expressions of voter intent:
- (A) Any ballot which is properly marked in the target area, as specified by the ballot instructions.

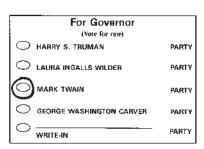
For Governor (Vote for one)	
HARRY S. TRUMAN	PARTY
C LAURA INGALLS WILDER	PARTY
MARK TWAIN	PARTY
GEORGE WASHINGTON CARVER	PARTY
WRITE-IN	PARTY

This constitutes a vote for Harry S. Truman

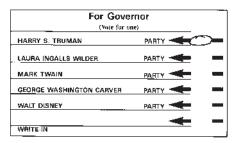
For Gove	rnor	
(Yole for a	le)	
HARRY S. TRUMAN	PARTY 🔫	_
LAURA INGALLS WILDER	PARTY	
MARK TWAIN	PARTY -	_
GEORGE WASHINGTON CARVER	PARTY -	_
WALT DISNEY	PARTY -	_
	-	
WRITE-IN		

This constitutes a vote for Laura Ingalls Wilder

- (B) Any ballot that is properly marked with any device other than the approved marking device which prevents a machine count shall be counted as a vote.
- (C) The target area next to a candidate or issue preference is circled.

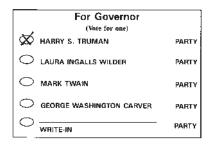


This constitutes a vote for Mark Twain

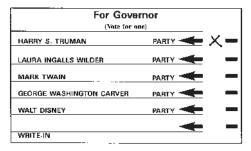


This constitutes a vote for Harry S. Truman

(D) There is a distinguishing mark in the target area next to a candidate or issue preference including but not limited to the following examples:



This constitutes a vote for Harry S. Truman



This constitutes a vote for Harry S. Truman

For Governor (Vote for one)	
HARRY S. TRUMAN	PARTY
C LAURA INGALLS WILDER	PARTY
O MARK TWAIN	PARTY
GEORGE WASHINGTON CARVER	PARTY
WRITE-IN	PARTY

This constitutes a vote for Harry S. Truman

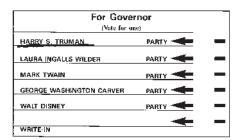
For Gove		
HARRY S. TRUMAN	PARTY	_
LAURA INGALLS WILDER	PARTY -	-
MARK TWAIN	PARTY -	_
GEORGE WASHINGTON CARVER	PARTY -	_
WALT DISNEY	PARTY -	/-
WRITE-IN		_

This constitutes a vote for Walt Disney

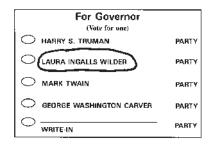
(E) The name of a candidate or issue preference is circled or underlined.

For Governor (Vote for one)	
O HARRY S. TRUMAN	PARTY
C LAURA INGALLS WILDER	PARTY
MARK TWAIN	PARTY
GEORGE WASHINGTON CARVER	PARTY
WRITE-IN	PARTY

This constitutes a vote for Harry S. Truman



This constitutes a vote for Harry S. Truman

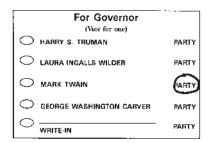


This constitutes a vote for Laura Ingalls Wilder

For Gove	nor	
(Vote for on	ie)	
HARRY S. TRUMAN	PARTY <	
LAURA INGALLS WILDER	PARTY -	-
MARK TWAIN	PARTY -	
GEORGE WASHINGTON CARVER	PARTY -	_
WALT DISNEY	PARTY -	_
	-	
WRITE-IN		

This constitutes a vote for Laura Ingalls Wilder

(F) The party abbreviation associated with a candidate's name is circled.

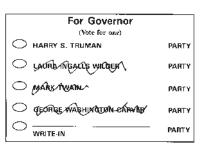


This constitutes a vote for Mark Twain

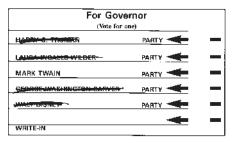
пог	
e)	
PARTY -	_
PARTY -	-
PARTY	-
PARTY	
PARTY 🔫	
	_
	PARTY PARTY PARTY

This constitutes a vote for Mark Twain

(G) If a voter marked each choice by crossing out the names of candidate or issue preference not chosen, such expressions of intent shall constitute a valid vote for such candidate or issue preference not crossed out.

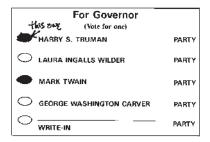


This constitutes a vote for Harry S. Truman

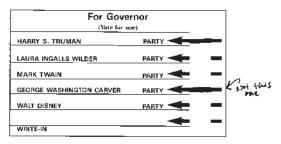


This constitutes a vote for Mark Twain

(H) In the event that there are distinguishing marks for two (2) or more candidates, clarified by an additional mark or marks that appear to indicate support, the ballot shall be counted as a vote for the candidate with the additional, clarifying marks.



This constitutes a vote for Harry S. Truman

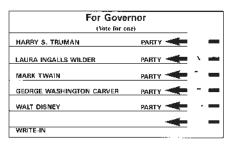


This constitutes a vote for Harry S. Truman

(4) The following shall not be considered expressions of voter intent: (A) Hesitation or stray marks.

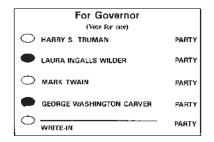
For Governor (Vote for one)	
HARRY S. TRUMAN	PARTY
O LAURA INGALLS WILDER	PARTY
○ MARK TWAIN	PARTY
GEORGE WASHINGTON CARVER	PARTY
WRITE-IN	PARTY

This constitutes an undervote



This constitutes an undervote

(B) In the event that there are distinguishing marks for two (2) or more candidates, without additional clarifying marks, the ballot shall be deemed an overvote.

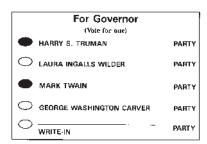


This constitutes an overvote

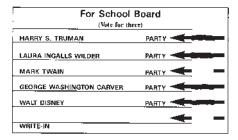
For Gover	rnor	
(Yote for or	ne)	
HARRY S. TRUMAN	PARTY -	
LAURA INGALLS WILDER	PARTY -	
MARK TWAIN	PARTY <del>**</del>	_
GEORGE WASHINGTON CARVER	PARTY 🔫	-
WALT DISNEY	PARTY	
	-	_
WRITE-IN		

This constitutes an overvote

(C) If a voter marks more candidates than there are positions to be elected for that office, the marks do not constitute a valid vote for any candidate in that race.

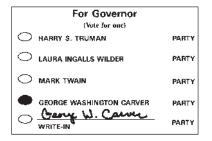


This constitutes an overvote

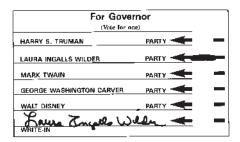


This constitutes an overvote

- (5) In jurisdictions using optical scan systems, a valid vote for a write-in candidate must include the following:
- (A) The name of a qualified write-in candidate. If the name of the candidate, as written by the voter, is substantially as declared by the candidate it shall be counted, or in those circumstances where the names of candidates are similar, the names of candidates as shown on voter registration records shall be counted; and
- (B) The name of the office for which the candidate is to be elected
- (6) If a voter designates a vote for a named candidate on the ballot and also provides for a write-in candidate in the same race it shall be treated as follows:
- (A) If a voter designates a vote for a named candidate on the ballot and writes in the same candidate in the write-in area, the vote shall count for that candidate.

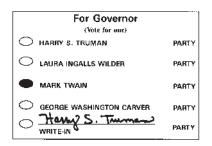


This constitutes a vote for George Washington Carver

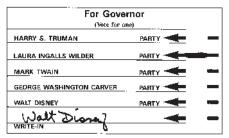


This constitutes a vote for Laura Ingalls Wilder

(B) If a voter designates a vote for a named candidate on the ballot and writes in the name of a qualified write-in candidate or the name of a different named candidate on the ballot in that race, it shall be considered an overvote with neither candidate receiving credit for the vote.

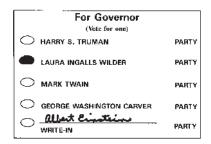


This constitutes an overvote



This constitutes an overvote

(C) If a voter designates a vote for a named candidate on the ballot and writes in the name of a person who is not a qualified write-in candidate and not a named candidate on the ballot in that race, it shall be considered an overvote with no candidate receiving credit for the vote.



This constitutes an overvote

For Governor		
(Vote for o	ne)	
HARRY S. TRUMAN	PARTY -	
LAURA INGALLS WILDER	PARTY <del>—</del>	_
MARK TWAIN	PARTY -	_
GEORGE WASHINGTON CARVER	PARTY -	-
WALT DISNEY	PARTY -	
Michael Dougas		-

This constitutes an overvote

(7) Whenever a hand recount of votes of optical scan ballots is ordered, the provisions of this rule shall be used to determine voter intent

AUTHORITY: section 115.225, RSMo Supp. 2005. Original rule filed Aug. 8, 2001, effective March 1, 2002. Emergency rescission and rule filed Feb. 2, 2006, effective Feb. 18, 2006, expires Aug. 16, 2006. A proposed rule covering this same material is published in this issue of the Missouri Register.

# Title 15—ELECTED OFFICIALS Division 30—Secretary of State Chapter 9—Uniform Counting Standards

#### **EMERGENCY RESCISSION**

**15** CSR **30-9.030** Uniform Counting Standards—Paper Ballots. This rule provided for standards to be used by election authorities when counting ballots cast using paper ballots.

PURPOSE: This rule is being rescinded so that updated standards may be promulgated for use by election authorities when counting ballots using paper ballots.

EMERGENCY STATEMENT: There is a compelling governmental interest in rescinding this rule because a corresponding emergency rule updating the counting standards for paper ballots has been filed and will be effective February 18, 2006. A proposed rescission, which covers the same material, is published in this issue of the Missouri Register. The scope of this emergency rescission is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Office of the Secretary of State believes this emergency rescission is fair to all interested persons and parties under the

circumstances. This emergency rescission was filed February 2, 2006, effective February 18, 2006, expires August 16, 2006.

AUTHORITY: section 115.225, RSMo 2000. Original rule filed Aug. 8, 2001, effective March 1, 2002. Emergency rescission filed Feb. 2, 2006, effective Feb. 18, 2006, expires Aug. 16, 2006. A proposed rescission covering this same material is published in this issue of the Missouri Register.

### Title 15—ELECTED OFFICIALS Division 30—Secretary of State Chapter 9—Uniform Counting Standards

#### **EMERGENCY RULE**

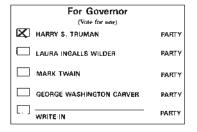
#### 15 CSR 30-9.030 Uniform Counting Standards—Paper Ballots

PURPOSE: This rule provides for standards to be used by election authorities when counting ballots cast using paper ballots.

EMERGENCY STATEMENT: On February 2, 2006 the Office of the Secretary of State filed an emergency rule concerning uniform counting standards for optical scan voting systems. As part of the elections division program for compliance with the Help America Vote Act (HAVA) of 2002 and the equipment qualification process, the Secretary of State (SOS) reviewed existing counting standards. This review revealed a potential for ambiguity in the counting standards rule for optical scan ballots, for example the use of the term "adjacent to." The increased numbers of voters and jurisdictions using optical scan voting systems makes a uniform counting standard that maximizes the accuracy and efficiency of hand recounts crucial to the improvement of election administration. As the first election in 2006 approaches that involves all local election authorities, including those jurisdictions using optical scan systems for the first time (April 4), it was necessary to have a uniform counting standard which is capable of expeditiously handling a large volume of ballots. As the current uniform counting standards for paper ballots mirror those relating to optical scan systems, there is a compelling governmental interest in the promulgation of this emergency rule in order to maintain the consistency of counting standards for each voting system and

The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Office of the Secretary of State believes this emergency is fair to all interested persons and parties under the circumstances. This emergency rule was filed February 2, 2006, effective February 18, 2006, expires August 16, 2006.

- (1) The election authority shall be responsible for insuring that the standards provided for in this rule are followed when counting ballots cast using paper ballots.
- (2) The following marks shall be considered expressions of voter intent:
- (A) Any ballot which is properly marked, as specified by the ballot instructions, in the target area.



This constitutes a vote for Harry S. Truman

(B) The target area next to a candidate or issue preference is circled.

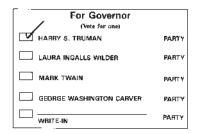
For Governor (Vote for one)	
HARRY S. TRUMAN	PARTY
LAURA INGALLS WILDER	PARTY
MARK TWAIN	PARTY
GEORGE WASHINGTON CARVER	PARTY
WRITE-IN	PARTY

This constitutes a vote for Mark Twain

(C) There is a distinguishing mark in the target area next to a candidate or issue preference including but not limited to the following examples:

For Governor	
(Vote for one)	
HARRY S. TRUMAN	PARTY
LAURA INGALLS WILDER	PARTY
MARK TWAIN	PARTY
GEORGE WASHINGTON CARVER	PARTY
WRITE-IN	PARTY

This constitutes a vote for Harry S. Truman



This constitutes a vote for Harry S. Truman

(D) The name of a candidate or issue preference is circled or underlined.

For Governor	
(Vote for one)	
HARRY S. TRUMAN	PARTY
(AURA INGALLS WILDER	PARTY
MARK TWAIN	PARTY
GEORGE WASHINGTON CARVER	PARTY
WRITE-IN	PARTY

This constitutes a vote for Laura Ingalls Wilder

For Governor (Vote for one)	
HARRY S. TRUMAN	PARTY
LAURA INGALLS WILDER	PARTY
MARK TWAIN	PARTY
GEORGE WASHINGTON CARVER	PARTY
WRITE-IN	PARTY

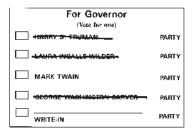
This constitutes a vote for Laura Ingalls Wilder

(E) The party abbreviation associated with a candidate's name is circled.

For Governor (Vate for one)	
HARRY S. TRUMAN	PARTY
LAURA INGALLS WILDER	PARTY
MARK TWAIN	PARTY
GEORGE WASHINGTON CARVER	PARTY
WRITE-IN	PARTY

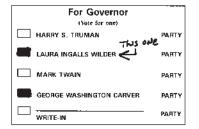
This constitutes a vote for George Washington Carver

(F) If a voter consistently marked each choice by crossing out the names of candidate not chosen, such expressions of intent shall constitute a valid vote for such candidate or issue preference not crossed out.



This constitutes a vote for Mark Twain

(G) In the event that there are distinguishing marks for two (2) or more candidates, clarified by an additional mark or marks that appear to indicate support, the ballot shall be counted as a vote for the candidate with the additional, clarifying marks.



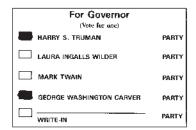
This constitutes a vote for Laura Ingalls Wilder

(3) The following shall not be considered expressions of voter intent: (A) Hesitation or stray marks.

For Governor	
(Vote for one)	
HARRY S. TRUMAN *	PARTY
LAURA INGALLS WILDER	PARTY
MARK TWAIN	PARTY
GEORGE WASHINGTON CARVER	PARTY
WRITE-IN	PARTY

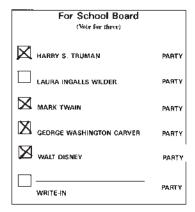
This constitutes an overvote

(B) In the event that there are distinguishing marks for two (2) or more candidates, without additional clarifying marks, the ballot shall be deemed an overvote.



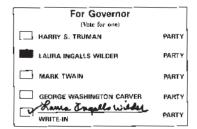
This constitutes an overvote

(C) If a voter marks more candidates than there are positions to be elected for that office, the marks do not constitute a valid vote for any candidate in that race.



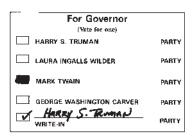
This constitutes an overvote

- (4) In jurisdictions using paper ballots, a valid vote for a write-in candidate must include the following:
- (A) The name of a qualified write-in candidate. If the name of the candidate, as written by the voter, is substantially as declared by the candidate it shall be counted, or in those circumstances where the names of candidates are similar, the names of candidates as shown on voter registration records shall be counted.
- (B) The name of the office for which the candidate is to be elected
- (5) If a voter designates a vote for a named candidate on the ballot and also provides for a write-in candidate in the same race it shall be treated as follows:
- (A) If a voter designates a vote for a named candidate on the ballot and writes in the same candidate in the write-in area, the vote shall count for that candidate.



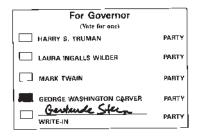
This constitutes a vote for Laura Ingalls Wilder

(B) If a voter designates a vote for a named candidate on the ballot and writes in the name of a qualified write-in candidate or the name of a different named candidate on the ballot in that race, it shall be considered an overvote with neither candidate receiving credit for the vote.



This constitutes an overvote

(C) If a voter designates a vote for a named candidate on the ballot and writes in the name of a person who is not a qualified write-in candidate and not a named candidate on the ballot in that race, it shall be considered an overvote with no candidate receiving credit for the vote.



This constitutes an overvote

(6) Whenever a hand recount of votes of paper ballots is ordered, the provisions of this rule shall be used to determine voter intent.

AUTHORITY: section 115.225, RSMo Supp. 2005. Original rule filed Aug. 8, 2001, effective March 1, 2002. Emergency rescission and rule filed Feb. 2, 2006, effective Feb. 18, 2006, expires Aug. 16, 2006. A proposed rule covering this same material is published in this issue of the Missouri Register.